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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.



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### BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 11

Application Number: 09/727,134  
Filing Date: November 30, 2000  
Appellant(s): WOLTERS ET AL.

Kevin J Moriarty  
For Appellant

### EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/13/2002.

#### (1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Claims s 1-7, 20, 21 stand and fall together.

**(8) *ClaimsAppealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(10) *Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

Claim(s) 1-4, 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Wiegert (PCT WO 99/03323).

In re independent claims 1, 2, 20, Wiegert discloses a feeding and picking device for feeding and picking a standing crop's individual plant stalks, the device comprising:

a picking device (10, 11) which separate useable parts from stalks, wherein a rotating about a vertical axis feeding device with outwardly extending fingers (stalk working device ref 21, 22 on fig 2-4; but also ref 20 on fig 4 may be considered) grasps or transports the stalk throughout an effective length of the picking device (as best shown on fig 4), as shown on fig 2, there are number of feeding & picking devices, or at least two are provided;

in re claim 21, a symmetrical line taken along a mid section of the harvesting means, for example from the mid ref 8, the picking and feeding devices are symmetrically positioned to each other in reference to both sides;

in re claim 3, a snapping channel (31) wherein the feeding device covers the snapping channel (as shown on fig 4, the feeding device covers the channel);

in re claim 4, as shown on fig 4, there are gaps between the fingers which are sufficient deep enough to allow the stalk to fit in the gap and thereby transported along or over the snapping channel, similarly as the above stated that the stalk is transported along the effective length of the picking device.

Claim(s) 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiegert (PCT WO 99/03323), in view of Thompson (2777267) and Pottinger et al (GB 2012154, cited by the applicant).

Wiegert discloses the claimed invention above including the fact the feeding element can be substituted by any other known devices (page 4, 2nd paragraph), however Wiegert does not show or list the claimed alternative feeding device.

Both Pottinger and Thompson disclose known devices for conveying the stalk, for example Thompson shows that the feeding device with finger (fig 1-2, ref 31), wherein the fingers of the upper element (for example ref 37) are directed away from a direction of rotation (as shown on fig 1) and the lower feeding element is beneath the upper feeding element and rotate the same direction as the upper one (fig 2, 3); and similarly Pottinger shows on fig 2 and 4, the same arrangement wherein the upper feeding element (13 or 14, and tines or fingers 10) are directed away from the direction of the feeding element; and the lower feeding element is beneath the upper feeding element and rotate the same direction as the upper one (fig 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the feeding device of Wiegert with the alternative feeding device taught by either Pottinger and/or Thompson, in order to improve the lifting

actions and support on stalks which may have been leaned forwardly by the agricultural harvester.

**(11) Response to Argument**

In response to Applicant's argument that, since the Applicant chose not to refute in application no. 09/721,512 (the Applicant identified it erroneously as 09/751,512) that ref. 22 shown by WO 99/03323 is a chopping device, thus, as Applicant argues, the same element cannot anticipate a rotating feeding element claimed in claims 1, 2 and 20 of the current application (i.e. 09/727,134).

Examiner disagrees that the current application and another application 09/751,512 are claiming the same subject matter. Application 09/721,512 requires or claims in addition to a rotating feeding device, a chopping device that chops the plant stalks, and the chopping device which has a chopping radius that overlaps the feeding radius of the rotating feeding device. While the current application only requires a feeding device and no chopping device as specified in application 09/721,512, therefore, it is clear that application 09/721,512 and current application are independent from each other in subject matter they claim. The Examiner of application 09/721,512 clearly had to make an evaluation of the claimed subject matter differently than the Examiner of current application. It is noted that the claimed subject matter of the current application should be evaluated on its merit based on the claimed subject matter and not on another materially independent and/or different application 09/721,512.

It is further noted that unlike what the Applicant argues, the rotating feeding element ref. 22 of WO 99/03323 is capable of conveying the stalks as required by the claim. It is also noted that the Applicant did not argue the alternate rotating feeding element ref 20 on fig 4 which was also considered in the rejection.

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Because application 09/721,512 distinctly claims a chopping element in addition to the rotating feeding device; therefore, the Examiner of the current application was not required to make the same interpretation as the Examiner of application 09/721,512.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Árpád Fábián Kovács  
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Art Unit 3671

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December 23, 2002

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